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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Application Number: 10/737,060

Filing Date: 12/16/2003

Applicant(s): Thomas J. Dinger and Fernando Salazar

Entitled: CATEGORIZING AND SHARING LEARNING OBJECTS

Examiner: Kang Hu

Group Art Unit: 3714

Attorney Docket No.: LOT920030029US1 (7321-014U)

TRANSMITTAL OF APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Submitted herewith is Appellant's Appeal Brief in support of the Notice of Appeal filed February 21, 2008 and in response to the Notice of Non-Compliant Appeal Brief mailed April 25, 2008. This Appeal Brief has been timely filed within the statutory period to provide an Appeal Brief from the date of the Notice of Appeal and any required fees for an extension of time under 37 C.F.R. § 1.136 are provided herewith. Notwithstanding, please charge any shortage in fees due under 37 C.F.R. §§ 1.17, 41.20, and in connection with the filing of this paper to Deposit Account 12-2158, and please credit any excess fees to such deposit account.

Date: April 21, 2008

Respectfully submitted,

/Steven M. Greenberg/
Steven M. Greenberg, Registration No. 44,725
Customer Number 46321

PATENT

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APPEAL BRIEF

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Sir:

This Appeal Brief is submitted in support of the Notice of Appeal filed February 21, 2008, wherein Appellants appeal from the Examiner's rejection of claims 1 through 19.

I. REAL PARTY IN INTEREST

This application is assigned to International Business Machines Corporation by assignment recorded on December 16, 2003, at Reel 014809, Frame 0893.

II. RELATED APPEALS AND INTERFERENCES

Appellant is unaware of any related appeals and interferences.

III. STATUS OF CLAIMS

Claims 1 through 19 are pending in this Application and have been twice rejected. It is from the multiple rejections of claims 1 through 19 that this Appeal is taken.

IV. STATUS OF AMENDMENTS

Claims 1, 9 and 17 were amended once in the Amendment filed on August 31, 2007 (the "Amendment") in response to the Non-Final Office Action dated May 31, 2007 (the "Non-Final Office Action"). Otherwise, Claims 2 through 8, 10 through 16 and 18 through 19 have not been amended previously and their original form as of the filing date of the Application of December 16, 2003.

V. SUMMARY OF CLAIMED SUBJECT MATTER

By reference to paragraph [0016] of Appellants' published specification, independent claims 1, 9 and 17 are respectively directed to a method for finding, managing and sharing learning materials in a learning management system (LMS), a machine readable storage having stored thereon a computer program for administering learning objects within an LMS, and a system for finding, managing and sharing learning materials in an LMS. In the Appellants' invention, a user of the LMS, otherwise referred to as a "learner", can select from various learning materials in an LMS, otherwise known as "learning objects." To be able to easily retrieve, manage, and share these materials, the learner can aggregate selected learning objects into an ad-hoc category or "learning folder", which is established on the LMS separately from an existing catalog of learning objects. The learner can further create and delete learning folders, and can add or remove learning objects to and from the folder. Even yet further, a user can allow

other learners on the system to access the folder by establishing a "learning link" for the folder. Each learning link can then specify which other learners can access the learning folder.

With specific reference to claim 1, claim 1 as amended recites a method of administering learning objects within an LMS. The method includes establishing within a computing system a learning folder for a particular learner in the LMS which is separate from an existing course catalog of learning objects. (Par. [0018] and [0019]) In particular, the learning folder includes a configuration to aggregate access to existing learning objects from a separate course catalog. (Par. [0019]) The method also includes adding within the computing system one or more of the learning objects to the learning folder. (Par. [0019]) Finally, the method includes initially limiting access to the learning folder within the computing system to the particular learner. (Par. [0021])

With specific reference to claim 9, claim 9 as amended recites a machine readable storage having stored thereon a computer program for administering learning objects within a learning management system. The computer program includes a routine set of instructions which when executed by the machine cause the machine to establish within the computing system a learning folder for a particular learner in the LMS which is separate from an existing course catalog of learning objects. (Par. [0018] and [0019]) Again, the learning folder includes a configuration to aggregate access to existing learning objects from a separate course catalog. (Par. [0019]) The routine set of instructions when executed by the machine further cause the machine to add within the computing system one or more of the learning objects to the learning folder. (Par. [0019]) Finally, the routine set of instructions when executed by the machine yet further cause the

machine to initially limit access to the learning folder within the computing system to the particular learner. (Par. [0021])

With specific reference to claim 17, claim 17 as amended recites an LMS. The LMS includes learning objects disposed within a catalog in a computing system and learners configured to access the learning objects within the computing system. (Par. [0018] and [0019]) The LMS also includes a learning folder management user interface within the computing system through which particular ones of the learners can establish learning folders. (Par. [0009] and [0018]) Importantly, each of the learning folders aggregates selected ones of the learning objects separate and apart from an existing course catalog of learning objects. (Par. [0011] and [0019])

VI. ISSUES TO BE REVIEWED ON APPEAL

Claims 1 through 19 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,978,648 to George et al. (George), or in the alternative under 35 U.S.C. § 103(a) as being unpatentable over George.

VII. THE ARGUMENT

THE REJECTION OF CLAIMS 1 THROUGH 19 UNDER 35 U.S.C. § 102.

For convenience of the Honorable Board in addressing the rejections, claims 2 through 8, stand or fall together with independent claim 1, claims 10 through 16 stand or fall together with claim 9, and claims 18 through 19 stand or fall together with independent claim 17.

Appellants' Claims 1, 9 and 17 each refers explicitly to the establishment within a computing system of a learning folder for a particular learner in an LMS which is separate from an existing course catalog of learning objects. Further, the learning folder as claimed includes a configuration to aggregate access to existing learning objects from a separate course catalog. Finally, as claimed, access to the learning folder is initially limited to the particular learner. Nowhere in George can there be found teachings directed to these important aspects of Appellants' independent claims.. Exemplary Claim 1 recites as follows:

1. A method of administering learning objects within a learning management system, comprising the steps of:

establishing within a computing system a learning folder for a particular learner in the learning management system (LMS) **which is separate from an existing course catalog of learning objects**, the learning folder comprising a configuration to aggregate access to existing learning objects **from a separate course catalog**;

adding within the computing system one or more of the learning objects to the learning folder; and,

initially limiting access to the learning folder within the computing system to the particular learner.

On page 3 of the Final Office Action, Examiner argues to the contrary by citing only column 11, lines 17 through 30 of George for all of the emphasized teachings set forth above. For the convenience of the Honorable Board, the entirety of column 11, lines 17 through 30 is reproduced herein as follows.

Referring to FIG. 36, a screen 301 is shown which **permits a student to download selected tasks for exporting for use at a remote location**, such as between school and home. The export screen 301 includes a task selection screen portion 303 which lists the **available tasks for export by the student** and permits selection of specific items. An options screen portion 305 allows inclusion of personal information and/or exemplars, rubrics to be incorporated into the export process for the selected tasks. Referring to FIG. 37, an import screen 307 permits a previously exported item or task which has been worked upon to be reintroduced into the system in its modified or supplemented form. The import

screen 307 includes a log on box 309 which permits the selection and introduction of the previously exported files.

This citation relates directly to Figure 36 of George which is also reproduced herein in its entirety:

U.S. Patent

Nov. 2, 1999

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5,978,648

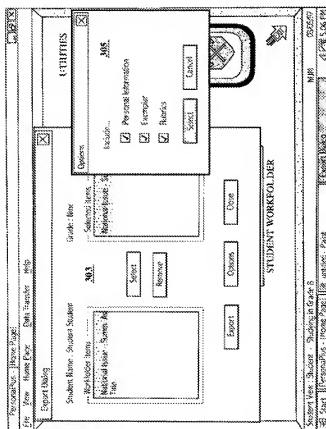


FIG - 36

Notably, the Examiner has taken the teachings of George out of context in a manner which exceeds the broadest reasonable interpretation of George. Specifically, the Summary portion of the George specification makes clear that the "tasks" referenced in column 11 are "assessment tasks" and not course objects or learning objects as set forth in Appellants' claims. As stated in column 2, lines 7 through 33,

Teachers create a series of **performance assessment tasks which are designed to access a student's entry level knowledge or application of knowledge in a given subject matter and covering a specified time frame.** Incorporated into the performance assessment tasks are exemplars which are models of exemplary achievement for students to emulate in their own progress and rubrics which are sets of scoring guidelines to be followed in the evaluation of a student's work. Also incorporated into the assessment tool system are course or curriculum goals which are established for a particular subject or course and broader district goals which are established by a school/district/state for all grades.

The assessment tasks are assigned digitally to the students on their computers for completion either at school or at home. The student in turn completes the assigned tasks through the creation of a number of work folders for each of the assigned tasks. **The work folders provide the student numerous multi media tools such as Internet access, word processing and paint programs, digital scanner, video camera and camcorder devices and audio recorders to assist the student in creating multi media presentations.** The teacher assessment tasks and student workfolders are designed so that they are truly interactive and allow both the teacher and student to also communicate and to provide information using any combination of text, audio and video from the selection of interactive media previously described.

By comparison, as reproduced below, paragraph [0005] of Appellants' published specification make clear that learning objects are learning materials or course materials.

The conventional learning management system can include a learning management server configured to manage the introduction and distribution of **course materials** to enrolled students. However, one common problem with large Learning Management Systems is that the amount of learning material can become so large that it is difficult for learners to find particular **learning materials, or "learning objects."** Also, once any appropriate learning object has been located, it can be difficult to relocate, or to direct another to locate, the same learning object.

While Appellants appreciate Examiner's reliance on the "assessment tasks" of George, one cannot fairly equate "assessment tasks" which are not part of any particular course, to the learning objects which by definition are associated with a particular course.

Of note, in George, assessment tasks are "exported" from the system at school to a working folder in the computer of the student so that the student can work on the tasks at home. Once the student has completed the assessment tasks, the results are uploaded back to the system. This is not an aggregation of access to existing learning objects from a separate course catalog as explicitly claimed by Appellants in each of claims 1, 9 and 17. Rather, this is the complete exportation of a task from one machine to another and certainly, no catalog is provided for within George. Specifically, in George, students access the assessment tasks from their own computers once the assessment tasks have been exported. In contrast, Appellants' claims 1, 9 and 17 each require that access is provided from the learning folder to the learning objects from the separate course catalog.

Finally, it is also important to observe that Examiner has not provided any specific reference in George to the initial limitation of access to the learning folder within the computing system to the particular learner as required by the plain claim language of claims 1 and 17. Further, no such limitation is apparent from the direct teachings of George.

THE REJECTION OF CLAIMS 1 THROUGH 19 UNDER 35 U.S.C. § 103.

Curiously, new to the Final Office Action of November 21, 2007 is the Examiner's statement of a rejection based upon 35 U.S.C. § 103(a). However, Examiner on page 3 of the Final Office Action only states, "Although George does not explicitly teach of, but it would have been obvious that George...." Appellants cannot make heads or tails of Examiner's rejection. It

appears that Examiner has inadvertently omitted critical text necessary to satisfy Examiner's obligations under 37 C.F.R. 1.104(c)(2) in which it is stated

(2) In rejecting claims for want of novelty or for obviousness, the examiner must cite the best references at his or her command. **When a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part relied on must be designated as nearly as practicable. The pertinence of each reference, if not apparent, must be clearly explained and each rejected claim specified.**

and therefore Examiner cannot sustain a rejection based upon 35 U.S.C. § 103(a) for this reason alone.

Based upon the foregoing, Appellant respectfully submit that the Examiner's rejections under 35 U.S.C. §§ 102(b) and 103(a) based upon the applied prior art are not viable. Appellants, therefore, respectfully solicit the Honorable Board to reverse the Examiner's rejections under 35 U.S.C. §§ 102(b) and 103(a).

Date: April 21, 2008

Respectfully submitted,

/Steven M. Greenberg/

Steven M. Greenberg

Registration No. 44,725

Customer Number 46321

VIII. CLAIMS APPENDIX

1. (Previously Amended) A method of administering learning objects within a learning management system, comprising the steps of:

establishing within a computing system a learning folder for a particular learner in the learning management system (LMS) which is separate from an existing course catalog of learning objects, the learning folder comprising a configuration to aggregate access to existing learning objects from a separate course catalog;

adding within the computing system one or more of the learning objects to the learning folder; and,

initially limiting access to the learning folder within the computing system to the particular learner.

2. (Original) The method of claim 1, further comprising the steps of:

establishing a learning link for the learning folder, which provides access to the learning folder for one or more additional learners.

3. (Original) The method of claim 1, further comprising the steps of:

modifying the learning folder by adding one or more additional learning objects to the learning folder.

4. (Original) The method of claim 1, further comprising the steps of:

modifying the learning folder by removing one or more learning objects from the learning folder.

5. (Original) The method of claim 1, further comprising the steps of:
modifying the learning link by adding access for one or more learners.
6. (Original) The method of claim 1, further comprising the steps of:
modifying the learning link by removing access for one or more learners.
7. (Original) The method of claim 1, further comprising the steps of:
removing a learning folder from the learning management system.
8. (Original) The method of claim 1, further comprising the steps of:
removing a learning link from the learning management system.
9. (Previously Amended) A machine readable storage having stored thereon a computer program for administering learning objects within a learning management system, the computer program comprising a routine set of instructions which when executed by the machine cause the machine to perform the steps of:

establishing within the computing system a learning folder for a particular learner in the learning management system (LMS) which is separate from an existing course catalog of learning objects, the learning folder comprising a configuration to aggregate access to existing learning objects from a separate course catalog;

adding within the computing system one or more of the learning objects to the learning folder; and,

initially limiting access to the learning folder within the computing system to the particular learner.

10. (Original) The machine readable storage of claim 9, further causing said machine to perform the steps of:

establishing a learning link for the learning folder, which provides access to the learning folder for one or more additional learners.

11. (Original) The machine readable storage of claim 9, further causing said machine to perform the steps of:

modifying the learning folder by adding one or more additional learning objects to the learning folder.

12. (Original) The machine readable storage of claim 9, further causing said machine to perform the steps of:

modifying the learning folder by removing one or more learning objects from the learning folder.

13. (Original) The machine readable storage of claim 9, further causing said machine to perform the steps of:

modifying the learning link by adding access for one or more learners.

14. (Original) The machine readable storage of claim 9, further causing said machine to perform the steps of:

modifying the learning link by removing access for one or more learners.

15. (Original) The machine readable storage of claim 9, further causing said machine to perform the steps of:

removing a learning folder from the learning management system.

16. (Original) The machine readable storage of claim 9, further causing said machine to perform the steps of:

removing a learning link from the learning management system.

17. (Previously Amended) A learning management system (LMS) comprising:

a plurality of learning objects disposed within a catalog in a computing system;

a plurality of learners configured to access the learning objects within the computing system; and,

a learning folder management user interface within the computing system through which particular ones of the learners can establish learning folders, each of the learning folders aggregating selected ones of the learning objects separate and apart from an existing course catalog of learning objects.

18. (Original) The system of claim 17, wherein the learning management user interface comprises a configuration for limiting access to each one of the established learning folders to the particular one of the learners who created the learning folder.

19. (Original) The learning management system of claim 18, wherein the learning management user interface further comprises a configuration for permitting access to selected ones of the established learning folders for others of the learners by way of corresponding learning links.

IX. EVIDENCE APPENDIX

No evidence submitted pursuant to 37 C.F.R. §§ 1.130, 1.131, or 1.132 of this title or of any other evidence entered by the Examiner has been relied upon by Appellant in this Appeal, and thus no evidence is attached hereto.

X. RELATED PROCEEDINGS APPENDIX

Since Appellant is unaware of any related appeals and interferences, no decision rendered by a court or the Board is attached hereto.